

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 CYNTHIA ANN HERNANDEZ,

14 Defendant.
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 5:22-cr-00217-MCS-1

**ORDER RE: MOTION TO MODIFY
SENTENCE (ECF NO. 50)**

1 Defendant Cynthia Ann Hernandez and co-schemers filed fraudulent applications
2 for unemployment insurance benefits. (Plea Agreement § 13, ECF No. 24.) She pleaded
3 guilty to mail fraud and access device fraud in excess of \$1,000. (Mins., ECF No. 27.)
4 The Court sentenced her to 30 months' imprisonment. (J. & Commitment Order, ECF
5 No. 40.) Defendant moves for a modification of her sentence pursuant to 28 U.S.C.
6 § 3582(c)(2). (Mot., ECF No. 50.) The Government opposes Defendant's motion.
7 (Opp'n, ECF No. 51.) Defendant did not timely file a reply.

8 9 **I. LEGAL STANDARD**

10 "Federal courts are forbidden, as a general matter, to modify a term of
11 imprisonment once it has been imposed, but the rule of finality is subject to a few narrow
12 exceptions." *Freeman v. United States*, 564 U.S. 522, 526 (2011) (internal quotation
13 marks and citation omitted). One such narrow exception is compassionate release
14 pursuant to 18 U.S.C. § 3582.

15 A court may reduce a term of imprisonment for a defendant sentenced based on
16 a sentence range subsequently lowered by the Sentencing Commission "after
17 considering the factors set forth in section 3553(a) to the extent that they are applicable,
18 if such a reduction is consistent with applicable policy statements issued by the
19 Sentencing Commission." 18 U.S.C. § 3582(c)(2). This prescribes "a two-step inquiry."
20 *Dillon v. United States*, 560 U.S. 817, 826 (2010). First, a court must determine whether
21 the defendant is eligible for a sentence modification following the policy statements in
22 United States Sentencing Guidelines ("U.S.S.G.") § 1B1.10. Second, a court must
23 determine whether exercise of discretion is appropriate given the § 3553(a) factors. *Id.*
24 at 827.

25 26 **II. DISCUSSION**

27 Defendant asks the Court to reduce her sentence given U.S.S.G. § 4C1.1, which
28 became effective November 1, 2023. (Mot. 2.) The new guideline provides a two-point

1 adjustment of the total offense level for “zero-point offenders.” The adjustment is
2 available for defendants who meet *all* of the following criteria:

3 (1) the defendant did not receive any criminal history points
4 from Chapter Four, Part A;

5 (2) the defendant did not receive an adjustment under § 3A1.4
6 (Terrorism);

7 (3) the defendant did not use violence or credible threats of
8 violence in connection with the offense;

9 (4) the offense did not result in death or serious bodily injury;

10 (5) the instant offense of conviction is not a sex offense;

11 (6) the defendant did not personally cause substantial
12 financial hardship;

13 (7) the defendant did not possess, receive, purchase,
14 transport, transfer, sell, or otherwise dispose of a firearm or
15 other dangerous weapon (or induce another participant to do
16 so) in connection with the offense;

17 (8) the instant offense of conviction is not covered by § 2H1.1
18 (Offenses Involving Individual Rights);

19 (9) the defendant did not receive an adjustment under § 3A1.1
20 (Hate Crime Motivation or Vulnerable Victim) or § 3A1.5
21 (Serious Human Rights Offense); and

22 (10) the defendant did not receive an adjustment under
23 § 3B1.1 (Aggravating Role) and was not engaged in a
24 continuing criminal enterprise, as defined in 21 U.S.C.
25 § 848

26 U.S.S.G. § 4C1.1(a).

27 The Court cannot grant Defendant relief because a reduction is only authorized
28 if an amendment to the guidelines applies to the defendant. U.S.S.G. § 1B1.10(a)(2).

1 The new guideline does not apply to Defendant because she received an adjustment
2 under § 3B1.1. In its presentence investigation report, the United States Probation
3 Office's calculation of Defendant's total offense level included a two-point adjustment
4 based on Defendant's aggravating role in the offense. (Rev. Presentence Investigation
5 Report ¶¶ 58–61, ECF No. 36.) In her sentencing position papers, Defendant did not
6 contest that an aggravating role adjustment was appropriate. (See Def.'s Sentencing
7 Position 4, 7, ECF No. 35.) At sentencing, the Court applied the unchallenged
8 adjustment. Because Defendant received an adjustment under § 3B1.1, she does not
9 meet criterion 10 of § 4C1.1(a).

10 Because the Court finds Defendant ineligible for a sentence modification, the
11 Court declines to reach the § 3553(a) sentencing factors in the second step of the
12 § 3582(c)(2) inquiry. *Dillon*, 560 U.S. at 826–27. However, the Court applauds
13 Defendant for participating in classes available to her while in custody. (Mot. 3.) The
14 motion for a modification of the sentence is denied.

15
16 **III. CONCLUSION**

17 The motion is denied. The Court directs the Clerk to terminate all open motions
18 in the docket.

19
20 **IT IS SO ORDERED.**

21
22 Dated: May 20, 2024



MARK C. SCARSI
UNITED STATES DISTRICT JUDGE